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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 502

WILLIS COX, WALTER CHAPLINSKY, JOHN KONIDES, ET AL.,

Appellants,

vs.

STATE OF NEW HAMPSHIRE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE.

STATEMENT AS TO JURISDICTION.

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SUPREME COURT OF THE UNITED STATES

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No. 502

WILLIS COX, WALTER CHAPLINSKY, JOHN KONIDES, ARVID E. MOODY, AND OVILA PAQUETTE,

Appellants,

vs.

STATE OF NEW HAMPSHIRE,

Appellee.

APPEAL FROM NEW HAMPSHIRE SUPREME COURT.

JURISDICTIONAL STATEMENT.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 46, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

New Hampshire Statute Drawn in Question.

The statute, the constitutionality and validity of which as construed and applied to appellants is here drawn in question, is Chapter 145, Sections 2, 3, 4 and 5, of the Public Laws of the State of New Hampshire, and which statute reads as follows:

Chapter 145 Public Laws of New Hampshire:

SECTION 2: THEATRICALS: PARADES: MEETINGS.

No theatrical or dramatic presentation shall be performed or exhibited, and no parade or procession upon any public street or way, and no open-air public meeting upon any ground abutting thereon, shall be permitted, unless a special license therefor shall first be obtained from the selectmen of the town, or from a licensing committee for cities hereinafter provided for.

SECTION 3: LICENSING BOARD.

Any city may create a licensing board to consist of the person who is the active head of the police department, the mayor of such city and other person who shall be appointed by the city government, which board shall have delegated powers to investigate and decide the question of granting licenses under this chapter, and it may grant revocable blanket licenses to fraternal and other like organizations, to theatres and to undertakers.

SECTION 4: LICENSES: FEES.

Every such special license shall be in writing, and shall specify the day and hour of the permit to perform or exhibit or of such parade, procession or open-air public meeting. Every licensee shall pay in advance for such license, for the use of the city or town, a sum not more than three hundred dollars for each day such licensee shall perform or exhibit, or such parade, procession or open-air public meeting shall take place; but the fee for a license to exhibit in any hall shall not exceed fifty dollars.

SECTION 5: PENALTY.

> If any person shall violate the provisions of the preceding sections he shall be fined not more than five hundred dollars; and it shall be the duty of the selectmen to prosecute for every violation of this chapter.

The New Hampshire Supreme Court and the courts below held that the statute was not unconstitutional and that it did not abridge appellants' freedom to worship ALMIGHTY GOD, freedom of speech, of press, and of assembly, in violation of the Fourteenth Amendment to the United States Constitution. Accordingly, that court sustained the statute's application to appellants' acts and decided in favor of validity of the statute and held it to be constitutional as applied to appellants.

Timeliness.

The judgment of the New Hampshire Supreme Court was entered on June 20, 1940 (R. 254). The opinion of that court was delivered on the same date and appears in the Record, p. 236 *et seq.* The judgment of the New Hampshire Supreme Court became final on June 20, 1940, the date of the opinion. The petition for appeal is duly filed and presented within ninety (90) days from such date to this Court and is therefore timely.

Statement of Nature of Case.

Appellants, Willis Cox, Walter Chaplinsky, John Konides, Arvid E. Moody, and Cyrila Paquette, and 63 other persons were arrested on the evening of July 8, 1939 by the police of Manchester, New Hampshire, for an alleged violation of the aforementioned statute.

Each of such sixty-eight persons was prosecuted by warrant and complaint, tried, convicted and fined by the Municipal Court of Manchester. Each duly appealed to the

Superior Court of Hillsborough County to later have a trial *de novo.*

Upon appeal to the Superior Court it was agreed that the five appellants herein would be tried and that the remaining 63 defendants would abide by whatever final decision would be made as to the five named appellants herein.

On November 20, 1939, the cases involving the five appellants named herein were tried to a jury before Oscar L. Young, Presiding Justice of the Superior Court, which resulted in their being found guilty by the jury on November 22, 1939. Thereafter, in due time, the same sentence was imposed against the five appellants named herein and each of the other 63 defendants by Judge Young as was imposed against each by the Manchester Municipal Court.

Each of the 68 defendants has posted bond in required amount to suspend execution of the judgment until final disposition is made of these cases on appeal.

The facts as established by the evidence are these:

All sixty-eight defendants and four other persons met at Odd Fellows Hall, located at 83 Hanover Street in the City of Manchester, New Hampshire, on the evening of July 8, 1939, for the purpose of engaging in an information march. This group of 88 persons divided into four or five sections of about 15 to 20 persons to each section. Each section then proceeded to a different part of the business district of the city. After reaching their respective territories, each group would line up in single-file formation and then proceed to march along the sidewalk, "single-file," that is, following one another.

While thus marching in single file along the said sidewalks each of the defendants carried a small staff held upright with a sign fastened thereto, reading:

RELIGION IS A SNARE AND A RACKET.

and on the reverse side of said sign it read:

SERVE GOD AND CHRIST THE KING.

Some of the marchers carried placards secured to their chests and bodies, before and behind, bearing the statement:

FASCISM OR FREEDOM.
HEAR JUDGE RUTHERFORD
AND FACE THE FACTS.

While thus marching they handed out printed leaflets announcing a meeting at a later time to be held in the Odd Fellows Hall in Manchester, where the talk on government entitled "Fascism or Freedom" would be given to the public free of charge.

The trial court below found, and the undisputed evidence showed, that Jehovah's Witnesses, including appellants named herein, did not apply for a permit and none was issued for such "information march".

There was no evidence and no finding that the traffic, automobile or other vehicular or pedestrian, was blocked or that the sidewalk was blocked. However, a police officer gave his opinion that the traffic was interfered with.

There was a dispute in the evidence as to the distance between the marchers. The prosecution contended that the marchers were about three feet apart, while the defendants all testified that they were from 15 to 20 feet apart, as per their instructions. Photographs, Appellants' Exhibits A to H inclusive, refute the State's evidence and corroborate the defendants' evidence on this point. However, this dispute is not material to any of the issues in this case and will not be discussed further.

The undisputed evidence showed that each of the defendants is an ordained minister of Almighty God to preach the

gospel of His Kingdom and to declare publicly in the streets and otherwise the judgments of JEHOVAH GOD written in His Word, the Bible, and in obedience to the command of the Most High God publicly proclaiming that this is the day of God's vengeance when His righteous judgments shall be speedily executed by His King Christ Jesus accompanied by the invisible hosts of heaven who will utterly throw down and destroy all deceptive, fraudulent and hypocritical institutions of earth to clear the way for the continuing increase and expansion of THE THEOCRACY, Jehovah's everlasting Government under Christ Jesus, which Government alone shall hold sway perpetually throughout the entire earth; and that all upright persons who obey its perfect laws shall joyfully hail only that righteous government and thus live and never die. That they were each engaging in said information marches as such ministers, and that their participation therein was one of their ways of worship and service to Almighty God. This was not disputed (R. 5-162).

Before any evidence was offered by either side, and before the case was opened, the appellants filed a motion to dismiss the complaints because of unconstitutionality (R. 3). At conclusion of the State's case, appellants filed another motion to dismiss the complaint and discharge appellants upon grounds therein stated (R. 71). On November 20, 1939, appellants filed a motion to dismiss (R. 164), and on November 21, 1939, filed a motion to dismiss (R. 166), and on November 22, 1939, filed another motion to dismiss. Each of said motions was overruled by the court and exception allowed to appellants. As grounds for such motions the appellants contended that the statute as construed and applied to them was invalid and void because it is in conflict with the United States Constitution, Fourteenth Amendment, Section 1, in that as so construed and applied it unlawfully deprives appellants of their rights of freedom to worship Almighty God according to God-

given commands recorded in Holy Writ and according to the dictates of their conscience; also, of freedom of speech and of press and of assembly. As further ground appellants contended in the motion that the statute is void on its face because of vagueness, indefiniteness and the delegating of arbitrary discretion and discriminatory powers to the licensing authority. It was further contended in the motions that the evidence failed to show appellants guilty.

Bill of exceptions covering all the points here urged was duly allowed by the trial judge, and the case was taken to the New Hampshire Supreme Court on such bill of exceptions (R. 1-3). The case was timely appealed to that court and duly docketed; and was thereafter argued at the May Term, 1940, and submitted on brief.

In the above matter *substantial Federal questions* attacking the validity of the statute were raised in the trial court by motions to dismiss at various stages of the proceedings set forth above, on the ground that as construed and applied to appellants, and on its face, the statute is invalid because it is in conflict with the United States Constitution, Fourteenth Amendment, Section 1, in that it unreasonably deprives appellants of freedom to worship Almighty God, freedom of speech, of press, and of assembly. And, further, that such statute vests in the licensing authority arbitrary and discriminatory powers and fails to prescribe conditions upon which a permit may be granted or refused, and is vague and indefinite; thereby denying equal protection of the laws in violation of the Federal Constitution, Fourteenth Amendment, Section 1 (R. 1-3).

These points of law were overruled by the trial court, although duly and timely urged (R. 3).

These Federal questions were carried forward and urged in the assignments of error, which were presented to the

New Hampshire Supreme Court in the time and manner required by law (R. —).

The New Hampshire Supreme Court passed upon each of said Federal questions or assignments, attacking the validity of the statute as applied to appellants, and held the statute valid and constitutional, both on its face and as applied, and found that the Fourteenth Amendment to the United States Constitution was not violated. See Opinion, Appendix A.

The State Supreme Court sustained the conviction of each appellant and affirmed the judgment of the trial court assessing a fine and costs as to each appellant and as to each of the remaining sixty-three defendants (R. —).

There was no evidence that the appellants or any of their associate defendants acted boisteriously or in a truculent manner. The undisputed evidence showed that their conduct did not involve a violation of the law of morals, or imperil the safety of the State, or violate property rights, or disturb the public peace. The undisputed evidence shows that appellants were engaged in an act of worship of Almighty God by publicly exposing the danger that the people face by yielding to or continuing in the snare of religion, which makes void the commandments of Almighty God.

In the petition for appeal and the assignments of error filed with this statement, appellants each complain of the judgment of the New Hampshire Supreme Court for and on account of each of the grounds set forth in their brief filed in said State court and which grounds are also set forth in the bill of exceptions duly approved by the trial court.

Grounds and Decisions Showing Substantial Federal Questions.

Appellants' contentions herein are that the statute drawn in question, as applied to their activity, is void in that it

A) deprives them of their right of freedom to worship ALMIGHTY GOD according to God-given commands recorded in Holy Writ and in accordance with their consciences, all in violation of Section 1, Fourteenth Amendment, United States Constitution;

B) deprives appellants of their right of freedom of speech and of press, in violation of the United States Constitution, Fourteenth Amendment, Section 1;

C) deprives appellants of their right of freedom of assembly, in violation of the United States Constitution, Fourteenth Amendment, Section 1;

D) is void on its face inasmuch as it vests in the licensing authority named therein unreasonable and unlimited arbitrary and discriminatory powers and prescribes no conditions upon which said authority may or may not grant or refuse a license, thus denying equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section 1;

E) is void on its face in that it is vague and indefinite and thus denies equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section 1.

ARGUMENT.

A.

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom to worship Almighty God according to God-given commands recorded in Holy Writ and in accordance with their consciences, all in violation of Section 1, Fourteenth Amendment, United States Constitution.

"Liberty" of all persons, as expressly protected against curtailment by a state and subdivisions thereof, embraces not only one's right to freedom from physical restraint,

but extends rightly to his free exercise and enjoyment of the right to entertain any opinion and to practice any right principle, which liberty and right even the Congress of the United States is constitutionally estopped from infringing.

Schneider v. *State*, 308 U. S. 147;
Thornhill v. *Alabama*, 309 U. S. 88;
Carlson v. *California*, 309 U. S. 106;
Cantwell v. *Connecticut*, 310 U. S. 296.

The appeal prayed for by appellants should be allowed by this Court and the judgment of the court below reversed and appellants completely discharged because the essential privilege of each appellant to worship Almighty God in accordance with God's written law and with the person's conscientious understanding of the Maker's requirements prescribed in that law, has been most wrongfully and unlawfully denied to appellants through the judgment of conviction by the court below.

In the high councils of this Nation and of its every State Almighty God is formally called upon continually for guidance, such as in the administering of oaths, opening of courts and legislatures, with prayer that the will of Almighty God be done. In fact, it is a fundamental proposition of law that is so firmly settled as not to require the citation of any authority that all the courts of this land take *judicial notice of the Bible* and all of its contents from cover to cover. Appellants testified that each is a minister of Jehovah God and the prosecution's witnesses likewise testified that each appellant is one of Jehovah's Witnesses, a minister of the gospel of God's Kingdom.

The renowned Blackstone in his *Commentaries* on the common law has plainly expressed the law to be followed by this Court in this matter. See Blackstone Commentaries, Chase 3d ed., pp. 5-7.

From its beginning this country has been recognized as a "Christian nation"; meaning that its inhabitants try to

follow the lead of Christ Jesus, the Son of the ALMIGHTY ONE, JEHOVAH.

The law of His Father the Lord Jesus Christ always obeys.

Every follower of Christ Jesus is duty-bound likewise to obey the law of JEHOVAH.—See Psalm 40:8; 1 Peter 2:21; Deuteronomy 11:27.

As one wholly consecrated and devoted to the service of Almighty God under His Son's lead, each appellant is also an ordained minister of Almighty God to preach the gospel of God's kingdom under Christ Jesus. For anyone like appellants willingly to disobey the commandments of Almighty God would result in the destruction of such disobedient one, as each appellant sincerely and conscientiously believes.

To worship Almighty God means to obey His commandments; therefore, to serve Him as commanded by His written law. The words of Christ Jesus are: "Thou shalt worship the Lord thy God, and Him only shalt thou serve" (Matthew 4:10). "God is a Spirit; and they that worship Him must worship Him in spirit and in truth."—John 4:24.

According to Black's Law Dictionary, "worship" is the offering of honor and adoration to the Divine Being.

In *Weiss* v. *District Board et al.*, 76 Wis. 177 (212), the court says that worship includes making Jehovah the object of supreme affection and *rendering to Him supreme obedience.*

Following are some of the commandments of Almighty God which every follower of Christ Jesus must obey:

"Ye are my witnesses, saith the Lord, that I am God."—Isaiah 43:10-12.

"The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the

meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn.''—Isaiah 61:1, 2.

These texts apply to all followers of Christ Jesus. To all such also the following commandments by the Lord are mandatory:

''This gospel of the kingdom shall be preached in all the world for a witness unto all nations: and then shall the end come'' (Matthew 24:14). ''Go ye into all the world, and preach the gospel to every creature.''—Mark 16:15.

''If thou dost not speak to warn the wicked from his way, that wicked man shall die in his iniquity; but *his blood will I require at thine hand.* Nevertheless, if thou warn the wicked of his way to turn from it; if he do not turn from his way, he shall die in his iniquity; but thou hast delivered thy soul.''—Ezekiel 33:8, 9.

Almighty God commands His followers to proclaim publicly His commandments and judgments to the people so that all those of honest heart may hear and have opportunity to learn and to choose the way of escape from disaster and to receive life everlasting under THE THEOCRACY, the Kingdom of Almighty God, now here. God's commandments to every true follower of His Son Jesus Christ emphasize that such follower shall publicly proclaim Almighty God's written judgments and condemnations of religion. Furthermore, Proverbs 1:20, 21 says:

''Wisdom crieth without; she uttereth her voice in the streets; she crieth in the chief place of concourse, in the openings of the gates: in the city she uttereth her words.''

Appellants verily believe that the act of publicly counseling and informing persons that ''Religion is a snare and a racket'' and to ''Serve God and Christ the King'' is directly

and unconditionally commanded by the Almighty God in His law, the Bible. We now make reference to the Scriptures above quoted. In doing thus, appellants did exactly as directed by the Lord Jesus Christ. See Mark 6:6, where it is said, "He went round about the villages, teaching." In the Bible it is recorded that Jesus said of the religionist clergy, which necessarily includes religion, that they were liars, murderers, adulterers and adulteresses and were of the Devil and that their father was Satan. See Matthew 23; John 8:44.

The statement "Religion is a snare and a racket" is a mild term when compared with the plain and burning words of the Lord Jesus concerning religion and religionists when He was on earth. We now refer to the Bible, of which this Court takes judicial notice, and which contains the supreme law, to prove to this Court that "religion is a snare and a racket." The Devil sets snares in which unsuspecting persons are caught. It is written, "The fear of man bringeth a snare; but whoso putteth his trust in the Lord shall be safe" (Proverbs 29:25). It is also written, "Neither shalt thou serve their [religious] gods; for that will be a snare unto thee" (Deuteronomy 7:4-16). See also Judges 2:2, 3; Psalm 106:36. If religion is a snare, then the exhibiting of banners to that effect is a friendly warning to the people of good will.

Adolf Hitler is a Catholic and a practitioner of religion, and his regime for several years has had the support of the Roman Catholic Hierarchy institution. It is well known that Hitler constantly consults the wicked spirits, and certainly Hitler and his religion are not teaching the youth morality, integrity or even common decency. Mussolini of Italy, Franco of Spain and Petain of France are all Roman Catholic totalitarian dictators operating with approval and control of the Roman Catholic Hierarchy of Vatican City.

Religion, as distinguished from the true following in the footsteps of Christ Jesus, has always been the institution of persecution and crime. Jesus Christ was hanged on a tree by religionists, and His true followers today likewise are persecuted and falsely charged by religionists. Early settlers of America fled from Europe to the bleak shores of America and hewed out of the forests the embryo of this nation on account of persecution at the hand of religionists.

Religion is a racket because it is false in that it does not represent God as claimed but does represent the Devil as stated by the Lord Jesus Christ. The religionists, clergy, put fear into the minds of sincere persons and thereby induce them to embrace religion. The clergy, religionists, teach to such people the doctrine of "purgatory" and many other false doctrines. They teach that the dead are in "purgatory" and many there suffer conscious punishment and torment and that by the prayers of priests, who receive money for uttering such prayers, the "punishment of those in purgatory" can be shortened. Such is not only a false doctrine, but a wicked defamation of God's name and Word. Such doctrines make God a party to a lie by claiming that He hears and answers the prayers of men who receive money therefor. Jehovah, the Almighty God, is never a party to granting favors upon a money consideration. This is the most subtle and wicked racket for obtaining the people's money by false representation. There are many other false doctrines taught by religionists, clergy, which injure the people. Therefore, it is absolutely and Scripturally true that "religion is a snare and a racket."

Thus, to appellants, it is true that religion is a snare and a racket and each did exactly as commanded by Jesus, whose faithful apostle Paul said, "Speak the truth though it make all men liars."—Romans 3:4; Ephesians 4:15.

We submit the above as the expressed contention of appellants that it was their duty as followers of Christ Jesus to declare that "religion is a snare and a racket" and that in doing such they were exercising their right of freedom to worship Almighty God.

Supreme.

Almighty God Jehovah is supreme.

All who live must depend upon Him and obey Him. He is the "fountain of life" (Psalms 36:9). One who would live must obey God's law (John 17:3). "The law of the Lord is perfect, * * * The statutes of the Lord are right * * * the commandment of the Lord is pure."—Psalm 19:7, 8.

When in ancient times the apostles of Jesus Christ were hailed before magistrates, charged with preaching the gospel from place to place and publicly, contrary to whim of certain governing officers, the accused answered: "We ought to obey God rather than men." (See Acts 5:17-42.) According to Holy Writ, those officers then "commanded that they should not speak in the name of Jesus, and let them go." Jesus' apostles positively refused to heed that command of men. Instead, they deliberately chose to resume acting in obedience to the command of Almighty God; and hence we read that "daily in the temple, and in every house, they ceased not to teach and preach Jesus Christ" (Acts 5:40-42). That same rule of the Almighty God every true follower of Jesus Christ boldly and joyfully and deliberately obeys today.

Misuse of legislative devices and misapplication of statutes to prohibit or to subjugate to human control the worship of Almighty God can be no better described than in the words expressed by the psalmist at the dictation of Almighty God to the effect that such is "framing mischief by law."—Psalm 94:20.

B.

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom of speech and of press, in violation of the United States Constitution, Fourteenth Amendment, Section 1.

The admitted facts and undisputed evidence show that appellants on the occasion in question were engaged in an activity of "the press." Even the information on its face and the State's evidence show this fact. The act of distributing printed leaflets and carrying signs advertising a public meeting on a subject of government and displaying a banner with the words "Religion is a snare and a racket" constitute *press activity*. It is a way of conveying information to others. The acts of moving about upon the streets, offering printed literature on Bible questions to the people, distributing literature to pedestrians, and simultaneously exhibiting in the sight of pedestrians signs bearing truthful informative slogans, are "press activities."

Here is presented a question of utmost gravity and importance. It goes to the very core of the foundation of the United States Government, the Constitution. This is an unalienable right of the appellants and of every inhabitant of the United States of America to acquire information and to impart it orally, in recorded form, and otherwise, to others. This related to an important subject and affected the rights and the eternal welfare of all persons and was a subject of interest to the appellants as well as to all other right-thinking and sober-minded persons.

The statute here in question, as applied to appellants, is not a valid exercise of the police power. By convicting appellants and holding contrariwise, the courts below have stumbled in the attempt to perform "the delicate and diffi-

cult task of weighing the circumstances and appraising the substantiality of the reasons advanced in support of the regulation'' (by means of said statute) of appellants' right of ''freedom of the press'' secured by the Fourteenth Amendment to the Federal Constitution. As construed and applied to appellants said statute and the conviction thereunder are in direct violation of said constitutional provision.

Cantwell v. *Connecticut,* 310 U. S. 296;
Schneider v. *New Jersey,* 308 U. S. 147;
Hague v. *C. I. O. et al.,* 307 U. S. 496;
Lovell v. *City of Griffin,* 303 U. S. 444.

Solely because the substance of the printed information distributed or displayed by means of banners carried by appellants is novel to some, offensive to others, or even shocks the religious susceptibilities of any, is not a sufficient or substantial ground for invoking the police power to deprive appellants of this right of freedom of the press or the right of freedom of speech. None of the justifications for denial of these rights exist in the present case. See *Near* v. *Minnesota,* 283 U. S. 697, 707.

C.

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom of assembly, in violation of the United States Constitution, Fourteenth Amendment, Section 1.

The right of persons to assemble on the streets and sidewalks is an inherent right of the people. It is also their ''imprescriptible right'' to use the sidewalks to disseminate information, orally or in printed or otherwise recorded form, and to call important questions to the attention of the public. In fact, this is the best place.

In recent cases involving the right to picket on the streets, this court, speaking through Mr. Justice Murphy, emphasized the points of the preceding paragraph.

Thornhill v. *Alabama,* 309 U. S. 88;
Carlson v. *California,* 309 U. S. 106.

In the case of *Schneider* v. *New Jersey, supra,* Mr. Justice Roberts, speaking for this court, said that the streets are the natural and proper place for dissemination of information and opinion, and that they have been used for this purpose from time immemorial, and also announced the rule that this fundamental personal right cannot be denied or abridged on the ground that the conveniences of the public will be interfered with.

Furthermore, in the celebrated case of *Hague* v. *C. I. O. et al., supra,* on the question of freedom of assembly and use of the streets this court said:

> "In the *Slaughter-House Cases* it was said. 16 Wall. 79: 'The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus,* are rights of the citizen guaranteed by the Federal Constitution. * * *
>
> "*Second.* What has been said demonstrates that, in the light of the facts found, privileges and immunities of the individual respondents as citizens of the United States, were infringed by the petitioners, by virtue of their official positions, under color of ordinances of Jersey City, unless, as petitioners contend, the city's ownership of streets, and parks is as absolute as one's ownership of his home, with consequent power altogether to exclude citizens from the use thereof, or unless, though the city holds the streets in trust for public use, the absolute denial of their use to the respondents is a valid exercise of the police power.
>
> "'* * * Wherever the title of streets and parks may rest, they have immemorially been held in trust

for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all. * * *

"It is enough that petitioners have prevented respondents from holding meetings and disseminating information, whether for the organization of labor unions or *for any other lawful purpose.*" [Italics supplied.]

From this it is apparent that the court below stumbled in its attempt to perform the delicate and difficult task of appraising the substantiality of the reasons advanced by the State as grounds for denying appellants their constitutional right. We emphasize the fact that this was a march or "assembly" for the purpose of dissemination of information on a subject of extraordinary importance and public interest, "Fascism or Freedom," and was not, therefore, one of the "other personal activities". True, the nature of this "mobile assembly" *way* of communicating information is by some regarded as unusual. Appellants' use of that *way* was, nevertheless, a beneficial and lawful exercise by them of rights safeguarded for every inhabitant of the United States of America by its Constitution.

D.

The statute in question is void on its face inasmuch as it vests in the licensing authority named therein unreasonable and unlimited arbitrary and discriminatory powers and prescribes no conditions upon which said authority may or may not grant or refuse a license, thus denying equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section 1.

This is argued along with and under point E hereof, because both points are so closely interwoven that time and space can be conserved in the interest of the court and others to so present these two points. Reference is therefore made here to the argument under point E, *infra.*

E.

The statute in question is void on its face in that it is vague and indefinite and thus denies equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section 1.

The said statute, Chapter 145, Sections 2, 3, 4 and 5, of the Public Laws of the State of New Hampshire, prohibiting parades and processions without a license, appears word for word at page 2, *supra.*

Appellants assert that said statute violates the "due process" clause of the Fourteenth Amendment because it fails to establish an adequate standard to govern the official action of the State or municipality, and is so vague that it fails to inform those who are subject to it what conduct will render them liable to its penalities.

This position is based largely upon the decision of this Court in the case of *Hague* v. *C. I. O. et al., supra,* wherein it was held that a street-meeting ordinance of Jersey City, New Jersey, which was invoked by municipal authorities to

forbid union members from holding meetings in streets and parks, is "void upon its face". The Jersey City ordinance provided as follows:

> "THE BOARD OF COMMISSIONERS OF JERSEY CITY DO ORDAIN:
>
> "1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.
>
> "2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.
>
> "3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.
>
> "4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County jail for a period not exceeding ninety days or both."

The foregoing Jersey City ordinance this Court declared void, in the following language:

> "We think the court below was right in holding the ordinance quoted in Note 1 void upon its face. * * * It does not make comfort or convenience in the use of streets or parks the standard of official action. It en-

> ables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage'. It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right."

The New Hampshire statute here drawn in question is likewise subject to the criticism that its standard is too vague. It does not declare that a permit is required for all street parades, processions and assemblages. The legal rights of citizens on sidewalks are certainly not quickly and easily definable. It is presumably the purpose of this statute to define a part of those rights. This argument is not intended to raise fanciful and strained objections. Testimony in this case showed that the information march was deliberately arranged with this statute in view. That is, the persons in the procession were instructed to walk on the sidewalk in single file, at least twenty feet apart. In such array they would be ordinary pedestrians, causing no more interference with others than any orderly pedestrian. It is true that there was conflict in the testimony as to whether or not there was any interference with pedestrians, but that conflict in the testimony serves undeniably to emphasize *the issue* here involved, for it demonstrates that no standard is defined as to what constitutes interference. The result is that the officers have uncontrolled discretion in determining whether or not a given procession falls within the limits of this ordinance. Under the *Hague* case such uncontrolled discretion is held to be an unconstitutional grant of power.

This Court has frequently considered the constitutionality of statutes and ordinances couched in language as vague

as the language of the statute here challenged. For example, a statute of Oklahoma made it criminal for contractors doing state work to pay workmen less than the "current rate of per diem wages in the locality where the work is performed". In *Connelly* v. *General Construction Co.*, 269 U. S. 385, this was held to violate the due process clause of the Fourteenth Amendment.

The New Hampshire statute here involved is subject to the same criticism, for the standard established therein is likewise "composed of a multitude of gradations". A given procession which might interfere with pedestrians at noon or at 6 P. M. might find a clear sidewalk at 10 A. M. or at 3 P. M. A large number of possible situations may be imagined. It is certainly not an exaggeration to say, in the language of the court, "that men of common intelligence must necessarily guess at its meaning and differ as to its application." For example, would a picket line in which the individuals were walking single file ten feet apart, moving up and down the sidewalk, constitute a parade or procession? Suppose the individuals in the picket line were walking two abreast, each couple ten feet from the other? Without discussing the matter any further, it would seem that such picketing should not require a permit.

The decision of this Court in the case of *Yick Wo* v. *Hopkins*, 118 U. S. 356, is the leading authority on this subject. It clearly and definitely decided that an ordinance conferring arbitrary authority upon the Board of Supervisors to grant or refuse permits for conduct of a laundry business was invalid as denying equal protection of the laws, within the Fourteenth Amendment to the Federal Constitution. This Court quoted with approval (at pages 372 *et seq.*) the following from a Maryland case:

> "It lays down no rules by which its impartial execution can be secured, or partiality and oppression prevented * * *; and when we remember that this action

or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism or other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to everyone who gives the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void."

When considering the New Hampshire statute here challenged the important thing to be borne in mind is the fact that nowhere therein does it grant the public the right to have an assembly or march or procession which is an assembly within the meaning of the Constitution. The statute says that there shall be no such parade or procession unless by license. By its terms the statute gives the licensing authority the privilege to so route and regulate the parade or "mobile assembly" as to completely amputate the right to have such.

Conclusion.

For sake of brevity, reference is here made to PETITION FOR APPEAL filed in this cause and we incorporate, by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that *substantial federal questions* were presented before the New Hampshire Supreme Court.

WHEREFORE the Supreme Court of the United States ought properly to note jurisdiction of this cause for final hearing in accordance with rules of this Court.

Respectfully submitted,

JOSEPH F. RUTHERFORD,
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Attorneys for Appellants.

APPENDIX A.

June 20, 1940.

3166, Hillsborough.

STATE *v.* WILLIS COX.

SAME *v.* WALTER CHAPLINSKY.

SAME *v.* JOHN KONIDES.

SAME *v.* ARVID E. MOODY.

SAME v. OVILA PAQUETTE.

COMPLAINTS, for taking part in a parade or procession on public streets in the City of Manchester without license therefor as required by Statute (P. L., *c.* 145, *s.* 2), the violation of which is made a misdemeanor (*Ib.*, s. 5). The defendants were first found guilty by the Municipal Court of Manchester, and again, on appeal, by a jury in the Superior Court.

The defendants are believers in a form of Christianity they regard as opposed to religion. They are connected with a directing organization and call themselves Jehovah's Witnesses and ordained ministers to preach the Gospel according to their views of Christianity.

On Saturday, July 8, 1939, early in the evening they met with 83 others at a hall in Manchester for the purpose of engaging in a demonstration called by them an "information march". They divided into groups of from 15 to 20 persons, each group proceeding to an assigned part of the business district of the city, and thence in single-file formation and "as close together as it was possible for them to get without interfering with each other's walking" marched on the sidewalks of certain streets, some carrying placards or signs. The defendants carried signs fastened to a short staff and bearing the sentence Religion is a Snare and a Racket on one side and on the other an exhortation Serve God and Christ the King. Leaflets were also distributed by them while marching.

Manchester had a population of over 75,000 in 1930, and there was testimony that on Saturday nights in an hour's time 26,000 persons passed one of the intersections where

the defendants marched. The marchers interfered with the normal sidewalk travel, but no technical breach of the peace occurred.

The march was a prearranged affair, and no permit for it was sought, although the defendants understood that under the statute one was required.

Their bill of exceptions was allowed. It presents as legal issues the construction of the statute and its validity under the State and Federal Constitutions.

Transferred by *Young*, J.

Thomas P. Cheney, Attorney-General, *Frank R. Kenison*, Assistant Attorney-General, and *J. Vincent Broderick*, County Solicitor, (*Mr. Kenison* orally) for the State.

Charles D. Barnard, Charles H. Barnard, Joseph F. Rutherford (of New York) and *Hayden Covington* (of New York) (*Mr. Covington* orally), for the defendants.

ALLEN, C. J. The statute (P. L., *c.* 145, *s.* 2) upon which the defendants were found guilty is this: "No theatrical or dramatic representation shall be performed or exhibited, and no parade or procession upon any public street or way, and no open-air public meeting upon any ground abutting thereon, shall be permitted unless a special license therefor shall first be obtained from the selectmen of the town, or from a licensing committee for cities hereinafter provided for."

A succeeding section (3) provides that a city may create a licensing board to be appointed by the city government, to "have delegated powers to investigate and decide the question of granting licenses" and to "grant revocable blanket licenses to fraternal and other like organizations, to theatres and to undertakers." Another section (4) requires all special licenses to be in writing and "to specify the day and hour of the permit to perform or exhibit or of such parade, procession or open-air public meeting," and establishes a range of fees from a nominal amount to $300. The section ensuing (5) prescribes the penalty for violation of the statute.

The contention that the defendants were not guilty under the terms of the statute has no merit. As the complaints

charged, they "participated in a certain parade or procession". A succession of persons substantial in number walked in formal march with signs and placards. This was a parade or procession such as is required by the statute to be licensed. It was a march in formation, and its advertising and informatory purpose did not make it otherwise. Its single-file order did not destroy its character as a procession, nor did its purpose to publish information take it out of the purview of the statute. Each group was an organized unit under leadership and direction. It is immaterial that its tactics were few and simple. It is enough that it proceeded in ordered and close file as a collective body of persons on the city streets. Whether it could be called an assembly, being in motion rather than stationary, is also immaterial. If it might be, it remained a parade or procession as the statute employs the words. Clearly, the defendants took part in a parade or procession without a license therefor.

The issue whether the act which the defendants violated is void under the State Constitution may be readily and briefly stated. The State bill of rights (Constn., Pt. I, Art. 22) has this provision: "The *liberty of the press* is essential to the security of freedom in a state: It ought, therefore to be inviolably preserved". The right to worship God in any manner is also held to be inalienable, provided the public peace, or others in their religious worship, are not disturbed. (Ib., Pt. I, Art. 5). Whether these articles serve to render the act a nullity, or at least inapplicable to the facts of the case, is to be determined. Decision turns upon the force and effect of another article of the bill of rights (31) reading as follows: "The legislature shall assemble for the redress of public grievances, and for making such laws as the public good may require". Another provision of the Constitution (Constn., Pt. II, Art. 5) confirms the grant of power to the legislature by vesting it with "full power and authority * * * to ordain * * * all manner of wholesome and reasonable * * * laws * * * directions and instructions, either with penalties, or without, so as the same be not repugnant or contrary to this Constitution, as they may judge for the benefit and welfare of this State, and for the governing and ordering thereof, and of the

subjects of the same, * * *". The defendants contend that the legislature has overstepped itself in enacting the law as an exercise of the protective power.

While highways are public, they are subject to public control. The public have no vested rights to their use, and it follows that the use is such as the State permits, and that any conditions of permission are proper, provided they are not forbidden by the Constitution.

"* * * the operation of an automobile upon the public highways is not a right but only a privilege (*Comm.* v. *Kingsbury,* 199 Mass. 542); and that which the State may withhold, it may grant upon condition." *State* v. *Sterrin,* 75 N. H. 220, 222, cited in *Opinion of the Justices,* 81 N. H. 566, 567, 568. "Classification between those who may and who may not have the privilege of highway use of motor vehicles must be reasonable, but the privilege itself need not be:" *Rosenblum* v. *Griffin,* 89 N. H. 314, 319.

The use is for travel, and the travel includes its incidents. The highway "easement is bought by the public when it is reasonably necessary for the public accommodation. The right, when bought, is a right of reasonably using the land as a way." *Varney* v. *Manchester,* 58 N. H. 430, 432. "Travelers upon public highways have a right to do all acts incident to 'a viatic use of the way.'" *Lydston* v. *Company,* 75 N. H. 23.

While travel may be with any end in view, a highway itself may be used only for the travel. The State may provide measures to prevent its use for other purposes, and to secure its use for travel only. It may regulate travel, and, since the right to travel is a privilege, may forbid any particular form of travel, or may permit it under such terms as it may impose, with constitutional bounds. The State is in the position of a landowner in control of the use of a highway, except that discrimination must be fair and that no essential rights be impaired. At its will it may shut off a highway from use and it may limit the travel uses to certain forms of use. "The State has authority to make regulations as to the time, mode and circumstances under which parties shall assert, enjoy, or exercise their rights (of highway use) without coming in

conflict with any of those constitutional principles which are established for the protection of private rights and property." *State* v. *White*, 64 N. H. 48, 50, in which case a statute forbidding drum beating in the compact part of a town was held valid and applicable to the defendants who beat a drum "in accordance with their sense of religious duty, and in worshipping God according to the dictates of their own consciences," and without "disturbing the public peace or the religious worship of others." "A reasonable measure of prevention to avoid disturbance is not an infringement of constitutional rights." *Ib.* 50. The permission of highway use must not be upon a condition restricting or abridging freedom of speech or writing, but impositions of conditions respecting the freedom are valid if they reasonably serve to prevent any substantial disturbance which is an interference of normal travel.

Undoubtedly the right to travel imparts the right of communciation from one while a traveler to others, and travel may be by persons congregated in a group; but while the reasonable incidents of travel are a part of it, the incidents do not themselves create or imply the right to travel as flowing from them. The right of speech is an incident of the right of highway travel, but the right of highway travel is not inherent in the right of speech.

In analysis of the statute under consideration, the normal and well established rules of construction with reference to constitutional validity are to be employed. It is assumed that the legislature intended to enact no invalid laws. It follows that when a law is capable of two constructions, one giving, and the other not giving, constitutional effect to it, the construction favoring validity is adopted. It is only when the language and terms of the act do not reasonably permit such a construction that the act is held unconstitutional. "When a statute is fairly susceptible of two interpretations, one rendering it constitutional and one not, that construction will ordinarily be adopted which will uphold its constitutionality. The presumption is that the legislature intended to keep within the limits of both the Federal and State Constitution,

and to restrict the operation of its enactments to cases where they will have effect consistently therewith." *Haselton* v. *Stage Lines*, 82 N. H. 327, 329. "* * * when a statute unsustainable in its literal terms is valid in some of its applications but not in others, it is to be read as though the latter were excepted from its operation." *Woolf* v. *Fuller*, 87 N. H. 64, 69, and cases cited. "When a statute may constitutionally operate in certain cases, but cannot in others which it in terms embraces, it will be upheld, unless evidently intended to conflict with the constitution, and construed not to apply to the latter class of cases, which 'are as fully and effectually excepted by necessary implication, as if the statute had contained an express proviso that it should not extend or apply to such cases.' *Opinion of the Justices*, 41 N. H. 555; *Kennett's Petition*, 24 N. H. 141." *Cheshire &c. Co.* v. *State*, 63 N. H. 167, 169.

While "words, provisions or modifications" may not at all events be read into a law to the end that it may be clothed with constitutional validity *(State* v. *Gerry*, 68 N. H. 495, 503), yet when the language used fairly admits of a construction which endows the law with validity, that construction will be adopted in preference to an opposing construction. Not to read in what the language implies is to amend or repeal. And judicial disregard of the express meaning is equally, if not more, serious as an attempt to legislate. Certainly a stated bestowal of "delegated power" is one of subsisting power, only, with no attempt to add thereto or to substitute therefor a power not delegable because not possessed. A grant expressed to be of only what may be granted cannot purport in addition or substitution, a grant beyond power to grant.

In application of these well settled principles of construction to the case here, if the clause of the act requiring a license for all open-air public meetings upon land contiguous to a highway is invalid, the invalidity is isolated and ineffective to nullify the act in respect to its requirements in other situations designated by it.

Also, the act is implicit in its requirement that the licensing authority act reasonably in granting or denying licenses, and with reference to the object of public order

on the public ways. If it does not in express terms "make comfort or convenience in the use of the streets * * * the standard of official action" (*Hague* v. *Committee &c.* 307 U. S. 496, 516), the necessary inference is that it does, based upon the presumption in favor of the validity of legislation as reenforced by the express provision of the act bestowing "delegated powers" upon the authority, as a grant intended to be only of due legislative power which may properly be delegated. The discretion thus vested in the authority is limited in its exercise by the bounds of reason, in uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination. A systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways, is the statutory mandate. The licensing authority has no delegation of power in excess of that which the legislature granting the power has, and the legislature attempted to delegate no power it did not possess.

The delegation of power is sustainable as one in connection with municipal government. That the licensing authority may be the local tribunal to administer the act and, as incidental to the administration, prescribe such rules and regulations for its due enforcement as it might think proper to adopt, rather than the governing councils of the city, is immaterial. The legislature's control over municipal corporations in such respect is undoubted. *Amyot* v. *Caron*, 88 N. H. 394.

The regulation in respect to license fees is not unreasonable. The range is from $300. to a nominal amount. The act is construed to require a reasonable fixing of the amount of the fee. The charge for a circus parade or a celebration procession of length, each drawing crowds of observers, would take into account the greater public expense of policing the spectacle, compared with the slight expense of a less expansive and attractive parade or procession, to which the charge would be adjusted. The fee is not a revenue tax, but one to meet the expense incident to the administration of the act and to the maintenance of public order in the matter licensed.

Application for a permit gives the public authorities notice in advance of any parade or procession for which license may be granted, thus giving opportunity for its proper policing. And the license, in fixing the time and place of a parade or procession, serves to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travelers, and to minimize the risk of disorder.

After all, the difference between a circus parade and the defendants' marching would seem to be only of degree, in respect to free speech and writing. The circus parade advertises its show to follow, with barkers using loud-speakers to announce the features of the show. The "information march" of the defendants was less colorful, but the essential purpose of gaining hearers or readers was the same. The difference between the objective of material profit and the exercise of religious freedom is of constitutional consequence, but the difference is observed in the requirements of the terms of the act which are necessarily implied.

In considering the case in the light of these views, it is to be borne in mind that no claim is made of any non-compliance with the act by any governmental agency. The defendants admit its non-observance by them, but say that they have not committed an offence against the state, since the enforcement of the act would violate the Constitution. Their sole position is that the act is a nullity because it defies the constitutional guaranty of individual freedom in respect to their right to march in the manner they did and for the purpose they had.

It is held that the act is a due exercise of the police power under the state constitution. The state's control over its highways entitles it to regulate their use for travel. Special uses for whatever purposes may be permitted upon such reasonable restrictions as may be prescribed and as are not unfairly discriminatory. The privilege of highway use for travel is not absolute. Maintenance of order, avoidance of congestion, and adjustment of different kinds of travel, are proper objects of legislative consideration in the regulation of use.

It is thought significant that the act prescribing no measures for controlling or suppressing the publication on

the highways of facts and opinions, either by speech or by writing. Communication by the distribution of literature or by the display of placards and signs is in no respect regulated by it. The regulation, in respect to highways, is only of parades and processions in their generality. Freedom of publication by speech or writing is under no restraint. The act is applicable only to organized formations of persons using the highways. The defendants separately, or collectively in groups not constituting a parade or procession, are under no contemplation of the act. At most, the parade or procession was a dramatization of their enterprise, designed to make it spectacular and thus attract attention. No audience to hear any speakers was sought, since no speaking was planned. It apparently was thought that the literature would be more noticed and impressive by a striking manner of its publication, and the time and place chosen were designed to have a large number of readers encountered. The interference with liberty of speech and writing seems slight. The distribution of pamphlets and folders by the groups traveling in unorganized fashion would have had as large a circulation, and parades and signs carried by members of the groups not in marching formation would have been as conspicuous, as published by them while in parade or procession. In respect to the placards and signs, some only advertised a lecture to be given at a future date. Part of the others were concededly not in good taste. If short of blasphemy, the motto or slogan that religion is a snare and a racket was an offence to compelled readers, whose willingness to read was not consulted. Freedom of speech is not understood to go so far as to require any hearers to listen, or of writing as to force it to be read by those confronted with it. The right to worship is not a right to disturb others in their worship, and the right to free speech and writing is not one to force speech or writing on an unwilling audience or readers. It is not unreasonable to say that the sentiment displayed had a provocative tendency to a disturbance of the peace in view of the manner, place and time of its publication.

The courts must uphold the regulations if they are within the confines of reasonableness. Conceding that a highway use in furtherance of divine worship or to advertise and

publish, by speech or writing, one's thoughts and views may be less reasonably subjected to control than a use for other reasons, it is not considered reasonable to hold that such special uses are subject to no control or that other highway travelers have only subordinate rights to such a special use. The public good for which legislation may be enacted is the good of all, and the State constitution recognizes no favored classes. Freedom to worship God, of speech, and of the press, is not abridged by the act, so far as the State constitution protects that freedom. An ordered freedom is all that the guaranty of individual rights secures. Maintenance of order neither abridges nor denies freedom.

The defendants had a right, under the act, to a license to march when, where and as they did, if after a required investigation it was found that the convenience of the public in the use of the streets would not thereby be unduly disturbed, upon such conditions or changes in time, place and manner as would avoid disturbance. They made no application for a license, and hence may not say that any right was denied them.

The granting or withholding of licenses is of an administrative character, to depend upon such tests of legislation or administrative regulations conformable to the legislation and in aid of enforcement, as are employed to find if the needs of public convenience are met and satisfied; if the public convenience is not subjected to undue disturbance, the license must issue.

The measure of control fixed by the act is permissible in the public interest without invasion of the individual rights, and as a due exercise of legislative powers granted by the state constitutions, the act is sustained. The result would be no different if the excluded evidence had been received as explanatory of the reasons entertained by the defendants for engaging in the parade or procession and for their disregard of the act. A religious doctrine that divine law should be obeyed rather than man's law when the two conflict may be entitled to statement but not to observance.

The question of the validity of the act under the Federal constitution is more difficult. Recent decisions of the United States Supreme Court (*Lovell* v. *City of Griffin*, 303 U. S. 444; *Hague* v. *Committee &c.*, 307 U. S. 496; *Schneider* v.

State, 308 U. S. 147; *Thornhill* v. *Alabama,* 84 U. S. S. C. Law Ed. 659; *Carlson* v. *California,* 84 U. S. S. C. Law Ed. 668; *Cantwell* v. *Connecticut,* No. 632, Oct. 1939 Term) are of pertinent bearing. In all of them the protective power was held improperly exerted, and the question arises whether the special features of the case here are sufficiently in contrast and distinction from them to require a conclusion of a due exercise of the power. "And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights". *Schneider* v. *State, supra.* "As in other cases when a broad distinction is admitted, it ultimately becomes necessary to draw a line, and the determination of that line in nice cases always seems somewhat technical, but still the line must be drawn". *Ellis* v. *United States,* 206 U. S. 246, 260.

For the State courts the difficulty is enhanced by the uncertainty of the construction which may be placed upon the act by the Federal courts. The local construction by the State court of last resort will receive by them "careful and respectful consideration" (*Coombs* v. *Getz,* 285 U. S. 434, 441) and "Great weight" (*Higginbotham* v. *Baton Rouge,* 306 U. S. 535, 539), if the rule in cases presenting the issue of a violation of the article in the Federal constitution forbidding the impairment of contract obligations is followed in cases dependent for decision upon individual rights protected by that instrument. But the local construction has no compelling authority, and forecast and prediction of the Federal construction seem in some aspects an anomalous employment of the judicial function. However, there is the requirement, as an incident of the requirement to pass upon the Federal question, and the conclusion may be accorded some consideration as authority. The State courts may not assume that their own construction of the local law will not be followed.

Approaching the question from this standpoint, it is thought that there are real and substantial differences existing between the case here and those of recent decision as above cited and relieving the act here under examination from the ban of the Federal constitution, at least as to the

offense charged against the defendants. The language of the statute discloses no purpose to impose a "previous restraint" upon freedom of the press or of speech as in *Lovell* v. *Griffin; Schneider* v. *State; Thornhill* v. *Alabama* and *Carlson* v. *California, supra,* nor to hamper freedom of assembly as in *Hague* v. *Committee, etc., supra.* No censorship of comments on matters of public concern, to which reference is made in the *Thornhill* case, is authorized or threatened and *a fortiori* no censorship of religion is contemplated as in *Cantwell* v. *Connecticut, supra.* Neither is there any basis in the present case for a claim of administrative discrimination against these defendants or the religious group of which they are members by the officers charged with the enforcement of the act, analogous to that which was found to exist in the *Hague* case, *supra.*

In essential aspects the Federal guaranties of freedom of speech, and of the press are the same as those of the state. The rights guaranteed are inviolable and may not be abridged. The Federal cases are thought to point out an emphasis for them under the Federal constitution in some superiority of merit and importance over those other guaranties, with the result of the need of closer scrutiny in any attempt to subject them to the exercise of the protective power. But it is understood that the protective power may be employed for their security and furtherance; and that to promote their function and operation regulation to coordinate them with relations and conditions which they may encounter may be justified. If the regulation is in part or altogether for some other objective of public concern, it is not invalid if freedom of speech or of the press is not thereby abridged. It may provide for a due and orderly manner of enjoyment. A license to permit its enjoyment may not be required as a form of censorship, but a license to permit its enjoyment in fair adjustment with the enjoyment of other relations and conditions is not understood to be under the ban of the Federal constitution. How far the right to freedom of speech spells the right to congregate on the public highways for oral communication does not here seem to require answer. The defendants' conduct was wholly in distributing and displaying matter to be read, and they had no objective of oral address and being heard, and if a parade

or procession is to be regarded as an assembly in motion, the right to conduct or engage in it is "not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order." *Hague v. Committee &c., supra,* 516.

Granting that the Federal guaranty of freedom of speech and writing demands its recognition as an incident of the right of highway use, none of the Federal cases cited deny the right of reasonable regulation of the exercise of the guaranteed right when it is enjoyed by persons while upon the highways. In the *Lovell* case a distribution of writings was attempted to be placed under control in arbitrary discretion, without references to "the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets". *Lovell* v. *Griffin, supra,* 451.

"Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs". *Minersville School District* v. *Gobitis,* U. S. Sup. Ct., No. 690, Oct. 139 Term. It would seem a play of imagination to find in the statute any purpose to restrain the freedom of religion, or its exercise through speech or writing.

It is said in some of the cases that an act or ordinance drawn more narrowly would be a valid exercise of the protective power, without abridging the guaranties in question. It is thought that the act here attacked and as locally construed permits no abridgment of the guaranties. Enforcement of the act according to its requirements as found to be contained in it would leave no play or room for the exercise of a too wide discretion. If in enforcement the requirements were not observed, the action would be arbitrary in the particular case. But enforcement of a law is administrative in character, and improper enforcement is disobedience of the law, which, if it makes conduct invalid, does not invalidate the law. If the act in question stated in express and explicit terms the requirements held to be inherent in it, it is not perceived how it would imperil any rights of speech, writing or worship. The discretion delegated has

no wider range than the legislature itself might exercise, and in the nature of things, as a practical necessity, the grant or denial of a license must rest upon decision arrived at with the employment of some discretion. The requirements of comfortable and convenient public travel in a particular case are not determinable by formula, or, for each case, in advance of presentation of its facts, but by discretionary adjustment within the mandates defining permissible considerations.

It is not thought to be of orderly propriety to assume, by extended analysis, to state the exact and precise limits and lines fixed by the federal cases between regulation and invasion. The circumstances of a particular case are factors bearing on the side of the line it falls. It is thought that the local act as analyzed in application to the state constitution does not conflict with the federal constitution as interpreted by the federal courts.

Holding, as is necessary, in the absence of a federal construction of the act, that it is to have the same construction in connection with the federal constitution as in connection with the state bill of rights, the act is considered valid under the federal as well as under the state constitution.

Exceptions overruled.

All concurred.

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